

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**PLATEAU TELECOMMUNICATIONS, INC.  
PETITION FOR WAIVER AND MODIFICATION  
OF CERTAIN COMMISSION RULES REGARDING  
MOBILITY FUND PHASE I SUPPORT**

Gregory W. Whiteaker  
Robin E. Tuttle  
HERMAN & WHITEAKER, LLC  
3204 Tower Oaks Boulevard  
Suite 180  
Bethesda, MD 20852  
[Greg@hermanwhiteaker.com](mailto:Greg@hermanwhiteaker.com)  
202-600-7274

*Counsel for  
Plateau Telecommunications, Inc.*

November 28, 2014

**TABLE OF CONTENTS**

**Summary.....ii**

**I. Background and Summary.....2**

**A. Plateau Award of Mobility Fund Phase I Support.....2**

**B. Plateau Assignment to AT&T.....3**

**C. Mobility Fund Phase I Obligations.....5**

**D. Summary of Plateau Request for Waiver.....6**

**II. Plateau Effectively Will Satisfy the MFI Requirements for at Least Four Census Tracts and Should Be Allowed To Receive Full MFI Support Without Performance Default.....8**

**III. Plateau Substantially Will Meet the MFI Requirements for Three Census Tracts and Should Be Allowed To Retain the Disbursed Support Without Performance Default.....13**

**IV. Grant of the Requested Waiver Is Justified and Would Serve the Public Interest...14**

**V. Conclusion.....18**

## Summary

Plateau seeks a waiver or modification of Mobility Fund Phase I (“MFI”) obligations relating to support in seven census tracts in New Mexico. Upon consummation of a pending assignment of its mobile wireless system to AT&T, Plateau no longer will retain access to spectrum or provide mobile wireless services in the MFI supported areas. Prior to consummation of the assignment, however, Plateau will have deployed a 4G network covering 75% or more of the previously uncovered road miles in four census tracts and covering at least 50% of the previously uncovered road miles in an additional three census tracts.

The purpose of MFI is to provide support *to build-out* mobile broadband networks in areas where such networks are unavailable. This is exactly what Plateau has done. In the seven census tracts at issue, the Commission substantially will have achieved its MFI objectives and received “the benefit of its bargain.” Consumers will benefit from the 4G network that Plateau has built, regardless of whether it is operated by Plateau or AT&T, and Plateau will provide the Commission with assurance of continued service. The collocation public interest obligation is not relevant here because Plateau constructed no towers in the supported areas. The voice and data roaming public interest obligations will continue to be satisfied because AT&T (like all carriers) is already subject to these obligations.

Good cause exists for the Commission to waive the rules and grant relief to: (1) allow Plateau to retain the first one-third of support already disbursed for any census tract in which Plateau has deployed a 4G network covering at least 50% of the previously uncovered road miles; (2) allow Plateau to collect full support up to the percentage of miles covered for any census tract in which Plateau has deployed a 4G network covering at least 75% of the previously uncovered road miles; (3) modify the reporting requirements for the seven census tracts; and (4) waive or cancel any default payment for the support in these census tracts. Denial of the requested relief would be inequitable.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**PLATEAU TELECOMMUNICATIONS, INC.  
PETITION FOR WAIVER AND MODIFICATION  
OF CERTAIN COMMISSION RULES REGARDING  
MOBILITY FUND PHASE I SUPPORT**

Plateau Telecommunications, Inc. (“Plateau”), by its attorneys, and pursuant to section 1.3 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby seeks a waiver of various obligations relating to Mobility Fund Phase I (“MFI”) support in certain census tracts in which Plateau was the winning bidder in Auction 901.<sup>1</sup> As discussed herein, upon the consummation of the proposed assignment of licenses and assets to New Cingular Wireless PCS, LLC (“AT&T”), Plateau will no longer have access to spectrum or provide mobile voice and data services in the supported areas. Plateau, however, will have substantially satisfied the applicable performance requirements, and the Commission will have achieved its objectives for MFI in these areas.

Therefore, in connection with MFI support for the census tracts identified herein, Plateau requests that the Commission grant the relief requested herein, and among other things, waive:

(1) the eligibility requirements in Rule 54.1003(b);<sup>2</sup> (2) the liability provision of Rule

---

<sup>1</sup> See *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, Public Notice, AU Docket No. 12-25, DA 12-1566, 27 FCC Rcd 12031 (2012) (“*Winning Bidder PN*”); see also *Mobility Fund Phase I Support Authorized For 39 Bids; Defaults On Four*

<sup>2</sup> See 47 C.F.R. § 54.1003(b).

54.1006(f);<sup>3</sup> (3) the automatic performance default and letter of credit (“LOC”) draw provisions in Rule 54.1007(c);<sup>4</sup> and (4) the disbursement request certification in Rule 54.1008(e).<sup>5</sup> Plateau also seeks modification of the reporting and certification requirements of Rule 54.1009(a).<sup>6</sup> As further explained herein, Plateau conditionally offers to maintain, for the remainder of the five (5)-year reporting period, the LOCs relating to the MFI support for which the Commission grants the waivers requested herein as assurance that service will continue to be offered in the supported areas at reasonably comparable rates.<sup>7</sup>

## **I. Background and Summary**

### *A. Plateau Award of Mobility Fund Phase I Support*

In the *USF/ICC Transformation Order*, the Commission comprehensively reformed the Universal Service Fund (“USF”) “to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and broadband services where people live, work, and travel.”<sup>8</sup> “For the first time, the Commission established a universal service support mechanism dedicated expressly to mobile services – the Mobility Fund.”<sup>9</sup> The goal of the MFI was “to extend the availability of mobile voice and broadband service on networks that provide third generation (often called ‘advanced’ or ‘3G’) or better performance and to accelerate the deployment of fourth-generation (‘4G’) wireless networks in areas where it is cost effective to do

---

<sup>3</sup> See 47 C.F.R. § 54.1006(f).

<sup>4</sup> See 47 C.F.R. § 54.1007(c).

<sup>5</sup> See 47 C.F.R. § 54.1008(e).

<sup>6</sup> See 47 C.F.R. § 54.1009(a).

<sup>7</sup> See 47 C.F.R. § 54.1009(a)(4).

<sup>8</sup> *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, Public Notice, DA 12-641, 27 FCC Rcd 4725, ¶ 6 (2012) (“*Auction 901 Procedures PN*”); see also *Connect America Fund*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 5 (2011) (“*USF/ICC Transformation Order*”).

<sup>9</sup> *Auction 901 Procedures PN*, at ¶ 6.

so with one-time support.”<sup>10</sup> MFI provided one-time support “to address gaps in mobile services availability by supporting the build-out of current-and next-generation mobile networks in areas where these networks are unavailable.”<sup>11</sup>

Plateau operates a mobile wireless network that provides service to rural areas in eastern New Mexico west Texas.<sup>12</sup> Plateau participated in Auction 901 for MFI support in September 2012 in order to upgrade and expand portions of its wireless network in New Mexico to provide 4G mobile broadband services using Advanced Wireless Services (“AWS”) spectrum that Plateau leases from its affiliate, New Mexico RSA 4 East Limited Partnership (“NM4ELP”). In October 2012, the Commission identified Plateau as a winning bidder in Auction 901,<sup>13</sup> and on June 20, 2013 authorized Plateau to receive MFI support in nine (9) census tracts in New Mexico.<sup>14</sup> The Commission also authorized Plateau to receive the first one-third of the MFI support for the nine (9) census tracts, the disbursement of which Plateau accepted.<sup>15</sup>

*B. Plateau Assignment to AT&T*

Plateau is an experienced operator, and has provided commercial mobile services in rural New Mexico and west Texas since November 1990. When Plateau sought MFI support, it did so in good faith, and was financially and technically qualified to comply with the MFI requirements and provide the services supported by MFI. Indeed, since receipt of MFI support, Plateau has been upgrading and expanding its 4G mobile broadband network (“4G Network”).

---

<sup>10</sup> *Auction 901 Procedures PN*, at ¶ 8, citing *USF/ICC Transformation Order*, at ¶ 322.

<sup>11</sup> *Auction 901 Procedures PN*, at ¶ 7, citing *USF/ICC Transformation Order*, at ¶ 299.

<sup>12</sup> Plateau also provides other services not relevant to the instant request or impacted by the sale to AT&T.

<sup>13</sup> *See Winning Bidders PN*.

<sup>14</sup> *See Plateau MFI Award PN*. Exhibit A attached hereto sets forth the census tracts, identified by Study Area Codes (“SACs”), in which Plateau was authorized to receive support, the total support authorized, and the first one-third of support disbursed.

<sup>15</sup> *See Plateau MFI Award PN*.

Subsequent to the award of support, however, changes in Plateau’s financial outlook, including loss of roaming revenue, have forced Plateau and its affiliates to sell their mobile wireless business. Plateau and NM4ELP, together with other affiliated companies, have entered into an Asset Purchase Agreement (“APA”) with AT&T, pursuant to which, among other things: (1) NM4ELP will assign its AWS license in the New Mexico 4 – Santa Fe Cellular Market Area (CMA556) to AT&T; (2) NM4ELP and Plateau will terminate Plateau’s lease of the AWS spectrum; (3) Plateau will assign its Lower 700 MHz C block license in CMA556 to AT&T; and (4) Plateau and its affiliates will assign their mobile wireless assets and business to AT&T (the “AT&T Transaction”).<sup>16</sup> The parties filed applications seeking Commission consent to the proposed AT&T Transaction on July 14, 2014, which the Commission accepted for filing on September 8, 2014.<sup>17</sup> Consummation of the AT&T Transaction will cause Plateau to be in default of its MFI obligations.<sup>18</sup>

---

<sup>16</sup> See File No. 0006366669. See also *AT&T Inc. and Plateau Wireless Seek FCC Consent to the Assignment of Advanced Wireless Services, Cellular, Lower 700 MHz, and Microwave Licenses, and International Section 214 Authorizations from Plateau Wireless to AT&T Inc.*, Public Notice, DA 14-1287, 29 FCC Rcd 10521 (2014).

<sup>17</sup> See *id.*

<sup>18</sup> Commission consideration of this petition may be independent of, and should not delay, the Commission’s review and action on the pending assignment applications. Although Plateau welcomes swift consideration of this petition, the Commission could act on the pending assignment applications while still considering this petition. This would allow the parties to proceed with necessary pre-closing and transition activities. Plateau acknowledges that absent the requested waivers, it will be in default of its MFI obligations upon consummation of the AT&T Transaction. The Commission is adequately protected, however, because USAC will continue to hold the LOCs, which the Commission could direct USAC to draw down upon Plateau’s default. Therefore, the Commission could act on this petition at any time, either before or after consummation of the AT&T Transaction, but prior to drawing on the LOCs.

C. *Mobility Fund Phase I Obligations*

An applicant for, and winning bidder of, MFI support must meet certain eligibility requirements, satisfy certain public interest obligations, and comply with certain other requirements to receive support and not be deemed in default. Specifically, in order to be eligible to receive MFI support for an area, an applicant must be an Eligible Telecommunications Carrier (“ETC”) in that area.<sup>19</sup> An applicant also must have “access to spectrum in an area that enables it to satisfy the applicable performance requirements” and must “retain such access for five (5) years after the date it was authorized to receive support.”<sup>20</sup>

Prior to being authorized to receive MFI support, a winning bidder must obtain an irrevocable standby LOC in an amount equal to the amount of MFI support that the winning bidder is eligible to request for disbursement, plus an additional amount to cover any performance default.<sup>21</sup> The winning bidder must maintain the LOC (or LOCs) until at least 120 days after the winning bidder receives its final distribution of support.<sup>22</sup>

Winning bidders authorized to receive MFI support must satisfy what are essentially three public interest obligations:

- A winning bidder of MFI support for 4G service must demonstrate construction of a 4G network that will support 4G mobile voice and data transmissions, at designated speeds and latency, covering 75% of the designated coverage units in the area deemed uncovered (“75% Coverage”) no later than three (3) years after the date on which it was authorized to receive support.<sup>23</sup>

---

<sup>19</sup> See 47 C.F.R. § 54.1003(a).

<sup>20</sup> 47 C.F.R. § 54.1003(b). In its MFI application, each applicant also had to certify that it was financially and technically qualified to provide the services supported by MFI in order to receive such support. See 47 C.F.R. § 54.1003(c).

<sup>21</sup> 47 C.F.R. § 54.1007(a).

<sup>22</sup> *Id.*

<sup>23</sup> See 47 C.F.R. § 54.1006(b). For MFI, the designated coverage units are previously unserved road miles.

- A recipient of MFI support must “allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase I on newly constructed towers that the recipient owns or manages in the area for which it receives support” for a period of five (5) years after the recipient was authorized to receive support.<sup>24</sup>
- A recipient of MFI support must “comply with the Commission’s voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase I support” for a period of five (5) years after the recipient was authorized to receive support.<sup>25</sup>

The Commission’s Rules also set forth certain ongoing reporting obligations related to MFI support. Specifically, a winning bidder must file annual reports for a period of five (5) years after the date it was authorized to receive MFI support. The report must include: (1) coverage plots showing areas of newly reached mobile services, (2) a list of census blocks previously deemed unserved, (3) coverage test data (if any tests have been performed), and (4) updates to information included in the original MFI application.<sup>26</sup> In addition, although neither the public interest obligations in Rule 54.1006 nor any other MFI rule expressly require an MFI recipient to provide service for any specific length of time, the annual report must include a certification that the winning bidder offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.<sup>27</sup>

*D. Summary of Plateau Request for Waiver*

The consummation of the AT&T Transaction will result in Plateau no longer retaining access to spectrum or providing mobile services in the supported areas. As discussed below, however, the objectives of the MFI will have been met, and the Commission will have received

---

<sup>24</sup> 47 C.F.R. § 54.1006(d). *See also* 47 C.F.R. § 54.1009(a).

<sup>25</sup> 47 C.F.R. § 54.1006(e). *See also* 47 C.F.R. § 54.1009(a).

<sup>26</sup> *See* 47 C.F.R. § 54.1009(a).

<sup>27</sup> *See* 47 C.F.R. § 54.1009(a)(4). MFI recipients also must maintain records for at least ten years. *See* 47 C.F.R. § 54.1010.

“the benefit of its bargain” because Plateau will have deployed a 4G Network that satisfies the 75% Coverage requirement for previously unserved road miles (“Unserved Miles”) in at least four (4) of the nine (9) census tracts prior to the consummation of the AT&T Transaction – well before the MFI three (3)-year construction deadline. No towers were constructed in the supported areas or with the MFI support, therefore the collocation obligation is not relevant. The voice and data roaming obligations will continue to be satisfied, because AT&T (like all other carriers) remains subject to these obligations. Finally, the areas will continue to receive service, and Plateau will protect the Commission against the loss of service by maintaining the LOCs longer than otherwise required by the rules.

With respect to these 75% Coverage census tracts and associated MFI support, Plateau seeks a waiver of the rules to: (1) allow Plateau to retain the first one-third of support already disbursed; (2) allow Plateau to collect the full support up to the percentage of Unserved Miles covered upon submission of coverage test data; (3) modify the reporting requirements; and (4) waive or cancel any default payment.

In three (3) of the five (5) remaining census tracts, Plateau does not anticipate that it will meet the 75% Coverage requirement prior to the consummation of the AT&T Transaction, but anticipates that Plateau will have upgraded its network to provide 4G mobile broadband service to well over 50% of the Unserved Miles. The MFI public interest obligations for these three (3) census tracts therefore also substantially will be met. As with the 75% Coverage tracts, above, the collocation and roaming obligations are inapplicable or otherwise satisfied, and Plateau will protect the Commission against loss of service by maintaining the LOCs.

With respect to these census tracts and associated MFI support, Plateau seeks a waiver of the rules to: (1) allow Plateau to retain the first one-third of support disbursed; (2) modify the

reporting requirements; and (3) waive or cancel any default payment. Plateau does not seek disbursement of additional support for these areas, however.

The waivers and relief requested herein would be conditioned on the Commission's approval, and the parties' consummation of the AT&T Transaction. If the AT&T Transaction is not consummated for some reason, Plateau will comply with all of its existing MFI obligations for support in all nine (9) census tracts.

Plateau does not seek a waiver of the MFI requirements in connection with support for any census tract in which Plateau does not deploy 4G service to at least 50% of the Unserved Miles prior to consummation of the AT&T Transaction.<sup>28</sup> Plateau will repay the initial one-third disbursement of the MFI support and pay the performance default associated with these census tracts.<sup>29</sup>

**II. Plateau Effectively Will Satisfy the MFI Requirements for MFI Support for at Least Four Census Tracts and Should Be Allowed To Receive Full MFI Support Without Performance Default.**

Phase I of the Mobility Fund provided one-time support *for the build-out* of mobile networks where such networks were unavailable. Plateau has been building, and continues to build out its 4G Network in the previously unserved areas. Plateau has already completed construction and deployment to provide 4G mobile broadband coverage, at the required speeds and latency ("4G Coverage"), to at least 80% of the Unserved Miles in the census tract associated with SAC 498014. Prior to the consummation of the AT&T Transaction, Plateau

---

<sup>28</sup> Currently, there are two census tracts in which Plateau expects to provide 4G Coverage to only around a third or less of the Unserved Miles as of the consummation of the AT&T Transaction. *See* Exhibit A.

<sup>29</sup> For the MFI support associated with these census tracts, and for any MFI support subject to repayment and/or performance default, Plateau requests that it be permitted to repay the initial MFI disbursement and make the performance default payment with a direct payment from its own funds rather than the Commission directing the Universal Service Administrative Company ("USAC") to draw upon the LOCs associated with MFI support. Upon such payment, the Commission would direct USAC to authorize the termination of the corresponding LOCs.

expects to complete construction and deployment to provide 4G Coverage to at least 75% of the Unserved Miles in the census tracts associated with SACs 498013, 498017 and 498019. Exhibit A sets forth the current and planned 4G Coverage.<sup>30</sup> Plateau expects to achieve the planned coverage prior to the end of 2014 or soon thereafter. With the exception of one site impacting SAC 498017, the tower work is complete, and the switch integration and site configuration will commence soon.

Subject to favorable Commission action on the requests relating to these census tracts, Plateau will conduct coverage tests to demonstrate that it provides 4G Coverage to at least 75% of the Unserved Miles in the four census tracts.<sup>31</sup> Plateau requests that the Commission authorize final disbursement of MFI support for any census tract in which Plateau demonstrates that it has met the 75% Coverage requirement. Such final disbursement would be the difference between the initial disbursement of MFI support and the amount of MFI support corresponding to the final percentage of demonstrated 4G Coverage.<sup>32</sup>

Although Plateau will no longer have access to the spectrum necessary to maintain its eligibility after consummation of the AT&T Transaction, Plateau will have met the primary purpose for and the substantive requirement of MFI support, namely the timely deployment of a

---

<sup>30</sup> See Exhibit A; *see also* Plateau Telecommunications, Inc. Form 690 Reports for SACs 498013, 498014, 498017, and 498019 (filed July 31, 2014).

<sup>31</sup> See 47 C.F.R. § 54.1006(c). Depending on the timing of Commission action on this request and the pending assignment applications, Plateau may not be able to conduct the required coverage tests until after the consummation of the AT&T Transaction. Plateau, however, will conduct such coverage tests shortly after consummation during the transition period during which Plateau will continue to operate the system for AT&T. To the extent necessary, Plateau requests a waiver of the certification requirement of Rule 54.1008(e) to allow Plateau to submit coverage test data and request disbursement of support after the consummation of the AT&T Transaction.

<sup>32</sup> See 47 C.F.R. § 54.1008(b)(3).

4G Network capable of providing service at Commission-designated speeds and latency to previously unserved locations. This is the *raison d'être* of Phase I of the Mobility Fund.

Rule 54.1006 essentially sets forth three (3) public interest obligations for MFI support: (1) construction, (2) collocation, and (3) roaming. Of these, the collocation obligations are not applicable because Plateau did not construct any towers in the supported areas.<sup>33</sup> The roaming obligations effectively will continue to be satisfied because AT&T remains subject to the Commission's voice and data roaming obligations on the network that it will acquire from Plateau.<sup>34</sup> The remaining public interest obligation is the construction of a 4G network by the applicable deadline, and Plateau will have satisfied this obligation.

The public interest obligations in Rule 54.1006 specify a deadline for completing construction of the network, but contain no express obligation to provide service for any period of time. Indeed, none of the MFI rules contain such an express requirement. Rule 54.1003(b) requires an applicant to have access to spectrum "that enables it to satisfy the applicable performance requirements," but the only express performance requirements are the public interest obligations in Rule 54.1006.

---

<sup>33</sup> See 47 C.F.R. § 54.1006(d) (collocation obligations apply to "newly constructed towers that the recipient owns or manages in the area for which it receives support").

<sup>34</sup> The Commission's Rules require MFI support recipients to "comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase I support." 47 C.F.R. § 54.1006(e). At the time of the MFI auction, the FCC's data roaming rules were subject to judicial challenge, which the U.S. Court of Appeals for the DC Circuit ultimately rejected. See *Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012). While Rule Section 54.1006(e) preserved the data roaming obligation for recipients of MFI support regardless of the outcome of the then pending challenge to the data roaming rules, that obligation is now effective and applicable to all wireless carriers, including AT&T. Thus, AT&T will be subject to the Commission's roaming obligations, including in the areas in which AT&T acquires the Plateau wireless network. The necessity for Rule 54.1006(e) has been mooted by Court's rejection of the challenge to the FCC's data roaming rules.

Rule 54.1009 requires winning bidders to submit annual reports, which include a “[c]ertification that the applicant offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.”<sup>35</sup> It is not clear, however, what the consequences are if an applicant fails to make this certification, and indeed in years one (1) through three (3) of the five (5)-year reporting period, an applicant would not be expected to be able to make this certification because the relevant network is not yet required to be constructed. The rule does not specify loss of support as a consequence if a recipient fails to make the certification.

The eligibility and reporting requirements, however, appear to imply an obligation that service be provided on the supported network for five (5) years after authorization of support. To the extent that there is such an obligation (and without conceding the validity of an implied obligation), this service obligation also effectively will be satisfied.

Plateau anticipates that AT&T will continue to offer 4G services (at comparable urban-rural rates) in the supported areas, and Plateau is willing to provide the Commission recourse if AT&T does not do so.<sup>36</sup> Specifically, subject to the Commission’s grant of the relief requested herein, Plateau commits to maintain LOCs for the remainder of the five (5)-year reporting period for the full amount of disbursed MFI support and the applicable performance default payment(s).<sup>37</sup> These LOCs will provide the Commission with assurance of payment if Plateau cannot certify continued 4G Coverage and rate comparability in the supported census tracts

---

<sup>35</sup> 47 C.F.R. § 54.1009(a)(4).

<sup>36</sup> For avoidance of any doubt, Plateau and its counsel do not purport to speak for AT&T or to suggest AT&T’s commitment to undertake any obligation related to MFI.

<sup>37</sup> Notably, the Commission’s Rules do not require recipients of MFI support to maintain a LOC after final disbursement of MFI support for the remainder of the five (5)-year reporting period. Rather, the Commission’s Rules only require MFI support recipients to maintain a LOC for “at least 120 days after the winning bidder receives its final distribution of support pursuant to §54.1008(b)(3).” *See* 47 C.F.R. § 54.1007(a).

through AT&T's continued provision of mobile voice and mobile broadband service through June 19, 2018.

In order to effectuate this commitment, Plateau requests modification of the MFI reporting requirements. Plateau will certify annually that the cell sites serving the four (4) census tracts remain operational, thus providing 4G Coverage, and that AT&T offers mobile voice and mobile broadband plans in the four (4) census tracts that satisfy the rural-urban rate comparability requirement.

Plateau requests a waiver of the eligibility requirement of Rule 54.1003(b) that Plateau maintain access to spectrum for five (5) years after it was authorized to receive support. As noted above, access to spectrum is not a public interest obligation. The Commission requires an applicant to certify retention of spectrum in order to enable the applicant to satisfy "applicable performance requirements." It is not necessary, however, for Plateau to retain the spectrum in order for the public interest obligations of the MFI to be satisfied. The public will benefit from the network Plateau has constructed regardless of whether it is operated by Plateau or AT&T.

AT&T will acquire the Plateau spectrum and 4G Network, and Plateau anticipates that AT&T will continue to provide 4G mobile voice and mobile broadband services over such network. The Commission established the MFI to speed the deployment of mobile broadband networks in unserved areas, and the Commission will have achieved this objective. In addition, as noted above, AT&T is subject to the Commission's roaming requirements, which requirements will continue to apply to the Plateau 4G Network, and AT&T offers nationwide service plans with urban-rural rate comparability. Accordingly, all public interest obligations and "applicable performance requirements" effectively will be satisfied.

Subject to the commitments stated herein, Plateau also requests that the Commission waive the automatic performance default provisions in Rule 54.1007(c), which would entitle the

Commission to draw the entire amount of the LOCs for Plateau's loss of eligibility or failure to comply with the public interest obligations of Rule 54.1006 or other terms and conditions of MFI support.<sup>38</sup>

**III. Plateau Substantially Will Meet the MFI Requirements for Three Census Tracts and Should Be Allowed To Retain the Disbursed Support Without Performance Default.**

In addition to the four (4) census tracts in which Plateau will satisfy the 75% Coverage requirement, Plateau also will be close to meeting the requirement in three (3) additional census tracts. Specifically, Plateau plans to provide 4G Coverage to at least 50% of the Unserved Miles in the census tracts associated with SACs 498016, 498018, and 498021.<sup>39</sup> In two (2) of these census tracts, Plateau expects to achieve 65% coverage of the Unserved Miles prior to consummating the AT&T Transaction, and in the third census tract Plateau has already achieved 55% coverage of the Unserved Miles.

For any census tract in which Plateau has achieved at least 50% coverage (but less than 75% coverage) of the Unserved Miles, Plateau requests that the Commission waive the automatic performance default provisions in Rule 54.1007(c) and permit Plateau to retain the initial one-third disbursement of MFI support. Plateau already has used this one-third support plus Plateau's own funds to expand the 4G Network to well over half of the Unserved Miles in these census tracts. Although Plateau will not have met the 75% Coverage requirement, it will have substantially provided coverage to these previously unserved areas.

As with the above-discussed four (4) census tracts in which Plateau will meet or exceed the 75% Coverage requirement, Plateau anticipates that AT&T will continue to provide service

---

<sup>38</sup> Subject to the Commission's grant of the waivers requested herein, Plateau also commits to continue compliance with the Commission's record retention requirements in Rule § 54.1010.

<sup>39</sup> See Exhibit A; see also Plateau Telecommunications, Inc. Form 690 Reports for SACs 498016, 498018, and 498021 (filed July 31, 2014).

and offer plans with urban-rural rate comparability. Subject to grant of the requested waivers, Plateau commits to maintain for the five (5)-year reporting period, the current LOCs for the first one-third of MFI support and the applicable performance default payment.

As with the 75% Coverage tracts above, Plateau requests that the Commission modify the MFI reporting requirements for the census tracts where Plateau has achieved at least 50% coverage. Plateau will report and certify annually that the cell sites providing coverage to the Unserved Miles in these census tracts are operational and that AT&T offers mobile voice and mobile broadband plans that satisfy the rural-urban rate comparability requirements. Finally, subject to grant of the requested relief, Plateau also commits to comply with the record retention requirements for these census tracts.

#### **IV. Grant of the Requested Waiver Is Justified and Would Serve the Public Interest**

The Commission may waive its rules for good cause shown, such as where special circumstances warrant a deviation from the rules, or strict compliance with the rules would be inequitable and inconsistent with the public interest.<sup>40</sup> There is good cause to waive the MFI requirements as requested herein relating to the census tracts in which Plateau will have achieved 4G Coverage to at least 75% of the Unserved Miles or where Plateau will have achieved 4G Coverage of at least 50% (but less than 75%) of the Unserved Miles.<sup>41</sup>

The Commission's primary goal in reforming universal service was "to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation."<sup>42</sup> The Commission established Phase I of the Mobility Fund

---

<sup>40</sup> See 47 C.F.R. §1.3. See generally *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

<sup>41</sup> As noted herein, Plateau is not seeking a waiver of the MFI obligations relating to any census tract in which Plateau has not constructed the 4G Network to cover at least 50% of the Unserved Miles.

<sup>42</sup> *USF/ICC Transformation Order*, at ¶ 1.

for the purpose of providing “one-time support to *immediately accelerate deployment of networks* for mobile voice and broadband services in unserved areas.”<sup>43</sup> The Commission awarded MFI support *to build networks*, and this is exactly what Plateau has done.

Plateau has used *all of its disbursed MFI support* as well as its own funds to deploy a 4G Network capable of providing 4G Coverage in the relevant census tracts. Plateau already provides 4G Coverage to 80% of the Unserved Miles in one census tract, and prior to consummation of the AT&T Transaction, will provide 4G Coverage to 75% or more of the Unserved Miles in three (3) other census tracts. For the support associated with these tracts, Plateau will have satisfied the only MFI public interest obligation that is applicable to, and not otherwise effectively satisfied for, the final disbursement of MFI support.

In three (3) additional census tracts, Plateau will provide 4G Coverage to at least 50% of the Unserved Miles. Although this is less than the 75% coverage required, it is still substantial coverage, and will provide significant public benefit. For two (2) of these three (3) census tracts, the Commission will have promoted the rapid deployment of coverage to approximately two-thirds of the Unserved Miles for only one-third of the MFI support.

As discussed above, the collocation obligations are not relevant to the support at issue in this request because no new towers were constructed in the supported areas. Upon consummation of the transaction, AT&T will continue to satisfy the voice and data roaming obligations because AT&T is obligated to comply with the Commission’s voice and data roaming requirements, including on the network it acquires from Plateau. Thus, all of the applicable MFI public interest obligations effectively will be met for the support relating to at least four (4) census tracts, and Plateau will have substantially satisfied these obligations in an additional three (3) census tracts.

---

<sup>43</sup> *USF/ICC Transformation Order*, at ¶ 28 (emphasis added).

Consumers will benefit from the 4G Network that Plateau has built regardless of whether it is owned by Plateau or AT&T. Following the consummation of the AT&T Transaction, AT&T will continue to provide service in the relevant census tracts, and Plateau has committed to provide the Commission recourse should AT&T cease to provide 4G Coverage to the relevant census tracts prior to June 19, 2018. AT&T also will offer service plans and rates that are “within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas” by virtue of the fact that AT&T is a nationwide service provider and offers nationwide plans.<sup>44</sup> The Commission will have achieved all of its objectives and public interest benefits, and will have obtained the benefit of its bargain with Plateau for these seven (7) census tracts.

Grant of the requested relief is in the public interest because it will incent Plateau to continue to deploy 4G Coverage to the previously unserved areas. Grant of the requested relief also is justified because the negative change in Plateau’s financial outlook, which necessitates the sale, is a circumstance beyond Plateau’s control.

Denial of the requested relief would be inequitable. Denying Plateau the authorized support and requiring Plateau to repay the disbursed funds plus a performance default relating to the four (4) census tracts in which Plateau will have achieved 75% Coverage will result in a substantial windfall to the Commission. The Commission will have achieved its broadband expansion goals at Plateau’s sole expense, without the Commission expending any public funds.<sup>45</sup> Requiring Plateau to repay the disbursed funds plus the performance default relating to the three (3) census tracts in which Plateau will have deployed 4G Coverage to at least 50% of the Unserved Miles also will result in a substantial windfall and would be inequitable.

---

<sup>44</sup> 47 C.F.R. § 54.1009(a)(4).

<sup>45</sup> Absent grant of the requested relief, the FCC will collect funds in excess of the MFI support from the performance default payment.

Plateau has demonstrated good cause for the requested relief. Plateau has used the MFI support to “address gaps in mobile services availability” by deploying a next-generation mobile network in areas where this network was unavailable.<sup>46</sup> The subsequent sale of the Plateau mobile wireless system does not diminish the public interest benefits of this deployment nor result in unfulfilled obligations relating to the system in the supported areas.

[Remainder of page intentionally left blank]

---

<sup>46</sup> See *Auction 901 Procedures PN*, at ¶ 7.

## V. Conclusion

For the reasons discussed above, the Commission should grant the relief requested herein. The Commission should waive Rule Sections 54.1003(b), 54.1006(f), 54.1007(c), and 54.1008(e) and grant such other relief as is necessary to: (1) allow Plateau to retain the first one-third of support already disbursed relating to any census tract in which Plateau has deployed 4G Coverage to at least 50% of the Unserved Miles; (2) allow Plateau to collect the full support up to the percentage of Unserved Miles covered relating to any census tract in which Plateau has deployed 4G Coverage to at least 75% of the Unserved Miles; (3) modify the reporting requirements for support relating to these seven (7) census tracts; and (4) waive or cancel any default payment relating to the support for these seven (7) census tracts.<sup>47</sup>

Respectfully submitted,



Gregory W. Whiteaker  
Robin E. Tuttle  
HERMAN & WHITEAKER, LLC  
3204 Tower Oaks Boulevard  
Suite 180  
Bethesda, MD 20852  
[Greg@hermanwhiteaker.com](mailto:Greg@hermanwhiteaker.com)  
202-600-7274

*Counsel for  
Plateau Telecommunications, Inc.*

November 28, 2014

---

<sup>47</sup> As noted above, Plateau requests that the Commission allow Plateau to make any payments due in connection with its MFI obligations rather than directing USAC to draw down on the LOCs.



## Declaration of Tom M. Phelps

I, Tom M. Phelps, do hereby declare under penalty of perjury the following:

1. I am the Chief Executive Officer of Plateau Telecommunications, Inc.
2. I have read the foregoing Petition for Waiver and Modification, and the factual statements made therein are true and accurate to the best of my knowledge, information and belief.



---

Tom M. Phelps  
Chief Executive Officer  
PLATEAU TELECOMMUNICATIONS, INC.  
7111 N. Prince Street  
P.O. Box 1947  
Clovis, NM 88102-1947

November 28, 2014